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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,400	02/07/2002	Ni Ding	10177-111-999	1077

20583 7590 02/27/2007
JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017

EXAMINER

THANH, LOAN H

ART UNIT	PAPER NUMBER
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3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/071,400

Applicant(s)

DING ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-17 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17, 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/07 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15,17,20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Baran (USPN 4,417,576).

Baran disclose a catheter comprising a balloon E having an outer surface, a membrane U having a plurality of pores therein and having an outer and inner surface wherein the membrane is disposed about the balloon; a reservoir/space between the outer surface of the balloon and the inner surface of the membrane and wherein the reservoir is connected to a reservoir lumen S and a biostable sponge coating D disposed upon the outer surface of the membrane wherein the sponge coating D is

exposed to the body lumen when the catheter is inserted or implanted into the body lumen. The material of the sponge coating is rubber which is a non-hydrogel polymer. The balloon inflation lumen is T. Applicant has claimed a reservoir but only functionally claimed the reservoir capable of containing a biologically active material. Claim 15 is considered to be product by process. See figures 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baran (USPN 4,417,576).

Baran discloses the invention as substantially claimed. See above. The Examiner is considering Baran to have a void space, which is greater than about 60% of the volume of the sponge coating when in the expanded condition. If Applicant does not deem this feature to be anticipated as shown in Figure 3, then it would have been obvious to one of ordinary skill in the medical balloon art to modify the void space to have a greater than about 60% volume of the sponge coating when in the expanded region in order to allow biological active material to be release to the tissue.

Response to Arguments

Applicant's arguments with respect to claims 14-17,20-22 have been considered but are persuasive. Applicant has argued the claim as amended. The Examiner is maintaining the rejection. With respect to applicant's arguments regarding Baran does not disclose a "catheter" or a "membrane", the Examiner is not in agreement. The language of "catheter" and "membrane" is considered to be broad and lacks any structurally distinguishing features that would overcome Baran. A catheter is well known in the medical art as a tubular device. As such, Baran shows a catheter. With respect to the "membrane" language, a similar position is being held by the Examiner. Membrane is considered broad lacking any structural distinguishing features and Baran is considered to disclose a membrane "U". Applicant has claimed a membrane with a plurality of pores. The sponge of U of Baran encompasses the language of the membrane of Applicant. The Examiner has clearly explained the elements that applicant has claimed in the broadest interpretation. Baran does disclose a catheter having a balloon E having an outer surface, a membrane U with an outer surface, inner surface and a plurality of pores therein and disposed about the balloon, a reservoir between the outer surface of the balloon and the inner surface of the membrane and a sponge coating D upon the outer surface of the membrane and the sponge coating D exposed to the body lumen. In the broadest interpretation, the space between the "membrane" U and the balloon E is considered the reservoir. Further, with respect to applicant's argument regarding the "biostable sponge coating", applicant has claimed this to be a non-hydrogel polymer having a plurality of voids which Baran shows as D

Art Unit: 3763

which is made of rubber and has a plurality of voids M as explained in the office action.

The claims are interpreted in the broadest interpretation given the broad language.


Applicant is suggested to claim structurally distinguishing features to overcome the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LoAn H. Thanh
Primary Examiner
Art Unit 3763

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